

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

**DUBACH, INC.**, a California corporation,                     )  
and **M.L. DUBACH**, individually,                                     )

**Plaintiffs,**   )

**v.**   )

**Case No. CIV 05-050-JHP**

**LUCKY ACE PETROLEUM, L.L.C.**,                                     )  
an Oklahoma limited liability company,                     )  
**EARL EDMONDS**, individually and d/b/a                     )  
Lucky Ace Petroleum, and **OMEGA TRADING,**                     )  
**L.L.C.**, a Minnesota limited liability company,                     )  
d/b/a Lucky Ace Petroleum,   )

**Defendants.**   )

**ORDER and OPINION**

Now before the Court is Plaintiffs' Motion in Limine to exclude an exhibit setting forth a proposed settlement offer and any testimony related to same, and Defendants' Response in opposition thereto. For reasons stated herein, Plaintiffs' Motion is GRANTED.

Federal Rule of Evidence 408 prohibits evidence of compromise and offers to compromise to prove liability. Plaintiffs assert that Defendants seek to introduce an e-mail containing a settlement offer in order to prove Defendants' counterclaim for abuse of process.<sup>1</sup> Clearly, such use is prohibited under the rule. Further, Local Rule 16.3 states that "any conversation relative to settlement . . . will not be used in any form in the litigation or in the event of trial." Finally, to the extent that use of this information is not prohibited by either of

---

<sup>1</sup>Defendants' counterclaim for abuse of process was terminated by this Court's Order entered contemporaneously herewith.

these rules, the Court finds that admitting such information would be more prejudicial than probative under Fed. R. Evid. 403. Plaintiffs' Motion is therefore GRANTED, and the evidence referenced therein is hereby deemed inadmissible.

In keeping with these findings, parties are directed to avoid any evidence, arguments, comments, and questions designed to elicit information concerning information deemed inadmissible herein, and should so instruct their witnesses. All exhibits should be edited accordingly, consistent with this Order.

IT IS SO ORDERED this 21<sup>st</sup> day of June 2006.



James H. Payne  
United States District Judge  
Eastern District of Oklahoma